IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

MFA.No. 1354 of 2001

OPMV.321/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PATHANAMTHITTA

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APPELLANT/3RD RESPONDENT:

THE NEW INDIA ASSURANCE CO. LTD.,
PATHANAMTHITTA REP. BY ITS ASST.
ADMINISTRATIVE OFFICER, REGIONAL
OFFICE, M.G.ROAD, ERNAKULAM.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS/RESPONDENTS 1 & 2:

1. P.K.ANANDANKUTTY, S/O KRISHNAN,
   PUTHENPURAYIL HOUSE,
   THIRUMOOLAPURAM P.O., THIRUVALLA.

2. SATHEESH, S/O NARAYANAN,
   VENGASSERIL HOUSE, DO. DO.

3. BHASKARA PILLAI, PILLAVILA VADAKKETHIL,
   KULANADA P.O., PANDALAM (DELETED).

Deleted as per order dt. 23.2.07 on IA 519/07

R1 BY ADV. SRI.S.SUBHASH CHAND
SRI.V.V.SHAJI

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.9102/2001 IN MFA 1354/2001

DISMISSED

13.7.2007

SD/-J.B.KOSHY, JUDGE
SD/-K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 1354 of 2001

JUDGMENT

Koshy, J.

Appellant Insurance Company was directed to pay an amount of Rupees three lakhs with 12% interest as compensation to the first respondent, who met with an accident on 19.5.1996 at Perunna. The first respondent claimed that while he was travelling in an autorickshaw, when he reached near Syni Mosaic Industry, due to the negligent driving of the autorickshaw, it hit at the back of a motorcycle going just in front of it and the accident occurred. On the impact of the same, he as well as the motorcyclist got injured and as a result he suffered very serious injuries. He claimed a compensation of Rupees five lakhs, which was later amended to Rupees seventeen lakhs. The Tribunal has awarded Rupees three lakhs with 12% interest per annum.

2. It is incidental to mention that the first respondent herein filed an appeal against the above award stating that the amount awarded was very meagre. According to him, as a result of the accident, before completing the full term, he applied for voluntary retirement when he was promoted and transferred to an interior area, as he was not able to go and work there. A Division Bench of this Court in M.F.A.No.521/01 held that he did not lose his employment and he continued his employment after the accident and merely because he was forced to take voluntary retirement, it cannot be stated that he should be granted 100% compensation for the disability and the amount granted was reasonable and justified. Even without issuing notice to the Insurance Company, the appeal was dismissed at the admission stage itself. Hence, the above decision will not bind the Insurance Company, even though that court felt that compensation awarded was just and reasonable.

3. The main contention raised by the appellant is that there is no concrete evidence to prove that the appellant was involved in the accident. It is also submitted that, as stated by the Tribunal, during examination PW1 stated that he got down at Perunna and then the accident occurred. It is further stated that in the F.I. Statement given by the motorcyclist first respondent's name was not mentioned. It is the contention of the claimant that the statement that he got down at Perunna is only a mistake. He was travelling in an autorickshaw at first. FIR was prepared and Exhibit A1 charge sheet was framed on the basis of the statement given by the motorcyclist, who was also injured in the accident. He has only stated about his injuries. That does not mean that the passenger in the autorickshaw was also injured. But, on investigation, an additional report was filed by the police. It was specifically stated that the passenger, who was travelling in the autorickshaw, also was injured with the description of injuries

in the wound certificate mentioned herein. Thus Exhibit A1 charge sheet was amended by Exhibit B1. Of course, major injuries were caused to the motorcyclist as well as to the first respondent. It is seen that in the medical certificates, wound certificate, treatment certificate, etc. the very same accident was mentioned. We also note that apart from PW1, the first respondent in the appeal, nobody else gave evidence. In these circumstances, we are inclined to agree with the Tribunal that the accident occurred while the first respondent was travelling in an autorickshaw and due to the negligent driving of the autorickshaw, it hit at the back of a motorcycle just going ahead of it and the accident occurred. We are not interfering with the finding of negligence.

4. Secondly, it is contended that the compensation awarded is on the higher side. There is no dispute that the injuries as mentioned in the wound certificate are serious. X-ray showed fracture of patella right foot. Comminuted fracture

big left toe. He was admitted as an inpatient. Exhibits A3 and A4 give the details of treatment. Exhibit A5 is the disability certificate issued by the Orthopaedic Surgeon and Additional Director, Superintendent and Chairman of the General Hospital, Ernakulam. He assessed the disability of the first respondent at 55%. As a result of the accident his left big toe was amputated and other toes were also injured and there was inability to the dorsum. Two surgeries were done, besides skin grafting. He was under POP for several days. He took six months leave. He has also stated that even though he was a Union Bank Officer, earning Rs.11,000/- per month, he lost promotional opportunities. He had to resign earlier as he was unable to work in rural areas. Even though all these facts were there, the Tribunal took the fact that he continued to be employed after the accident. Compensation was not calculated on a multiplier method, taking the monthly income. But, an amount of Rs.1,20,000/- was granted for

disability and loss of earning power. Considering the injuries, etc. Rs.40,000/- was granted as he was on loss of pay leave for more than four months. For medical expenses, bye-standers expenses, future treatment, etc. and considering the bills, Rs.20,000/- was granted. Taking into account, the nature of injuries, the position the appellant was holding at the time of the accident and considering the fact that he has to wear artificial shoes for walking, we are not of the opinion that the amount of compensation granted is excessive, so as to interfere in the matter. But, on the facts and circumstances of the case, we reduce the interest from 12% to 9% per annum.

The appeal is allowed to the above extent.

(J.B.Koshy, Judge)

13th July, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.1354 of 2001

JUDGMENT

13th July, 2007